

Who's Afraid of National Parliaments' "Green Card"?

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Five years from the entry of the Lisbon Treaty into force, national parliaments are evaluating the means of their influence and control over the EU law and policies. New ideas and improvements of existing procedures are being tabled. One of them is the so-called green card initiative, explored recently at least by Danish, Dutch and British parliament. Following a discussion paper by Lord Boswell of Aynho, Chairman of the European Affairs Committee of the House of Lords ([see a reviewed version](#)) debated at an informal meeting of a group of EU Affairs Committee chairs in Brussels, this idea has been put on the agenda of the upcoming [LII COSAC plenary in Latvia](#) with a view to have a broader discussion among the national parliaments and possibly reach an agreement on the procedure for initiating such green card.

The basic idea is that a group of national parliaments would send a contribution to the Commission calling for "new legislative action, or the review, amendment or repeal of existing legislation, including delegated or implemented acts". In order to rationalise and add political weight to what is in essence a joint letter, the parliaments may wish to agree on a "formal" procedure for adopting green cards.

According to the discussion paper, any parliamentary chamber may formulate a proposal for an EU action, including the reasons, the anticipated benefits and preferred type of reaction from the Commission. This draft will be distributed to other parliamentary chambers which will have six months to decide whether to co-sign it. If one third of the national parliaments do so, the contribution will be submitted to the Commission, designated as a "green card", which will signify its salience and breadth of support. The "votes" of national parliaments will be counted in the same way as in the early warning mechanism for the principle of subsidiarity, which includes the procedures known as yellow and orange card. This is also where the label "green card" comes from.

The (so far informal) reactions from "Brussels" are mixed. Most notably, views that the green card procedure can be incompatible with the Treaties as it is not foreseen by them have been voiced (but see the [letter from Commission Vice-President Timmermans](#)). The green card may perhaps also be viewed as a danger to the institutional position of the European Parliament, which itself does not have a right to initiate legislation and can only request the Commission to submit an appropriate proposal (Art. 225 TFEU). See e.g. the MEPs comments [here](#), pp. 122, 278-279, pointing in this direction (although they were not commenting on the current proposal!). In my opinion such arguments, shall they be formally presented, would not be convincing and there are indeed good reasons for trying out the green card.

First and foremost, the green card procedure would be nothing but an agreed form of coordination among national parliaments. It does not legally alter or affect the EU law and the powers of EU institutions in any way and it is not a proposal for an amendment of the Treaties.

Furthermore, within the framework of the [political dialogue](#) (a.k.a. Barroso initiative) national parliaments already are addressing comments on Commission directly to the Commission. The political dialogue does not have any basis in the Treaties and has an informal nature. The parliaments are in no way restricted regarding the content of their contributions and may also ask the Commission to amend existing or proposed legal regulation (and in fact they often do so). Therefore, any argument that may be employed against the green card equally applies to the political dialogue as well. Yet there are no proposals to discontinue the political dialogue.

It is true that unlike the green card, the political dialogue is based on political undertaking of the Commission to listen and reply to national parliaments' comments and not on an initiative of the parliaments themselves, but the EU law surely does not prevent national parliaments or the Commission from further mutual communication. Again, the proposed procedure does not (and cannot) legally force the Commission to submit a legal proposal, to consider the green card in policy formulation or even to reply to the parliaments. This is completely up to the Commission's decision as the case may be.

An individual green card proposal backed by a considerable number of national parliaments (and possibly their governments) may indeed put political pressure on the Commission, but this is hardly a problem given the

extensive lobbying system in Brussels. While the national parliaments may hope that the Commission makes a general political commitment on how to respond to green cards, in my opinion this is not of great importance. Much more important would be whether the Commission attempts to comment on the substance.

For national parliaments, the green card may be useful and conducive even if it does not lead to the desired result. Initiating the procedure would alert other national parliaments to a problem related to the functioning or absence of EU law in certain areas. This may facilitate a proactive approach towards EU policies and help the national parliaments with performing their communication and articulation function in European affairs. It may also lead to interesting exchanges of views on subsidiarity. Reaching a common view on what the problem is and what kind of solution at the EU level is desirable could well prove to be an uneasy task for national parliaments. That is why a flood of green cards cannot be expected. However, there is really nothing to lose.

The subsidiarity check mechanism introduced by the Lisbon Treaty has shown that a strong coordination among national parliaments is indispensable for an effective scrutiny. It has also highlighted the time pressures put on national parliaments in EU affairs and an (unwarranted!) image of national parliaments “obstructing” EU legislation. The green card intends to take the coordination further and add a new perspective to it. The proposed procedure to be agreed among national parliaments aims at effectiveness, as any formalisation of rules does. But is there any reason to be afraid of an effective coordination among national parliaments in EU affairs?

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